

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NORRIS, McLAUGHLIN & MARCUS, PA
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Attorneys for Plaintiff

HALFBRICK STUDIOS PTY LTD., an	:	
Australian Proprietary Limited	:	
Company,	:	CIVIL ACTION NO. _____
	:	
	:	
Plaintiff,	:	
v.	:	<u>COMPLAINT AND JURY DEMAND</u>
	:	
PEEK-A-BOO TOYS, LTD.,	:	
	:	
	:	
Defendant.	:	
	:	

Plaintiff Halfbrick Studios Pty Ltd., (“Halfbrick” or “Plaintiff”), with an address of Level 1, 190 Kelvin Grove Road, Brisbane, QLD, Australia, 4059, by and through its attorneys, Norris, McLaughlin & Marcus, PA, as and for its Complaint herein against defendant Peek-A-Boo Toys, Ltd. (“Peek-A-Boo” or “Defendant”), alleges as follows:

PARTIES AND JURISDICTION

1. Halfbrick is a Proprietary Limited Company organized and existing under the laws of Australia with its principal place of business in Queensland, Australia.
2. Peek-A-Boo is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 9040 Pennsauken Highway, Pennsauken, New Jersey.

3. This Court has personal jurisdiction over Peek-A-Boo because it is a New Jersey corporation and regularly conducts business in the State of New Jersey.

4. This action arises, in part, under federal law, particularly the Copyright Act, 17 U.S.C. §501, *et seq.*, and the Lanham Act, 15 U.S.C. §1051, *et seq.* This Court has federal question jurisdiction over this matter pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338(a). This Court also has diversity jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(2), because it is between a citizen of the State of New Jersey and a foreign corporation, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Halfbrick invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. §§ 1367 and 1338(b) over the remaining claims alleged herein, in that such claims are so related to the claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391(b) and 1400.

FACTUAL BACKGROUND

Halfbrick's Business

7. In its early days, Halfbrick operated as a contractor, creating games for other software companies on third-party platforms such as the Nintendo DS, Gameboy, Xbox, and Playstation.

8. With the growing sales of smart phones, Halfbrick decided in 2010 to venture into developing its own games, beginning with games for the Apple iPhone platform.

9. Halfbrick thereafter developed the Fruit Ninja™ game, which was released on April 20, 2010 on the Apple iTunes Store.

10. Halfbrick worked carefully to create a game that was original, creative, fun, easy to play, of a high quality in its design and programming, and had mass-market appeal.

11. Halfbrick's Fruit Ninja game consists of the user swiping a finger across the screen of the playing device, in imitation of a ninja's sword. The object of the game is to cut through pieces of fruit that appear as if tossed into the middle of the screen, while avoiding bombs and other dangers that also appear. As each fruit is cut by the user's finger, animated juice from the fruit splashes across the user's screen.

12. A cartoon character known as Sensei is also associated with the game. Sensei is a ninja and is dressed in traditional Japanese garb.

13. Soon after the iPhone release, the Fruit Ninja game was adapted and developed for other third-party platforms including the Xbox, Kinect, and Facebook. Each platform represented an additional investment of time and money for Halfbrick.

14. Halfbrick expended considerable effort developing business relationships in the computer gaming industry, working with media outlets, and building relationships with thought leaders and fans of the Fruit Ninja game.

15. Halfbrick worked diligently to provide regular updates to the Fruit Ninja game through online application delivery platforms such as the Apple iTunes Store, so that fans remained involved and interested in playing the Fruit Ninja game.

16. Because of Halfbrick's dedication to producing a quality software product and to maintaining contact with users through software updates and other means, the Fruit Ninja game rapidly became a commercial success after its launch.

17. Since April 20, 2010, the Fruit Ninja game has been downloaded over 150 million times globally. Fruit Ninja has over 70 million users in the United States.

18. Data from the connectivity features of the game shows that over one million users play Fruit Ninja on an average day.

19. In April 2011, Halfbrick was nominated for a prestigious Webby Award. In October 2011, the Fruit Ninja game was awarded Second Place at the Golden Joystick Awards, out of over 2 million votes cast by users.

Halfbrick's Intellectual Property Rights and Registrations

20. Halfbrick owns a U.S. Trademark Registration No. 3,960,784 for FRUIT NINJA as a combination word and design mark as depicted below for computer game software; software for computer games for use on mobile and cellular phones, use on personal computers, tablet computers, hand-held personal gaming devices, and home video game consoles, and use on gaming machines, including slot machines or video lottery terminals.



A copy of Halfbrick's trademark registration accompanies this Complaint as **Exhibit A**

21. Halfbrick also owns valuable common law trademark rights in FRUIT NINJA as a standalone mark and has filed U.S. trademark applications to register FRUIT NINJA as a standard character mark for (1) computer game programs; computer games adapted for use with an external display screen of monitor; computer games entertainment software; computer games programs downloaded via the Internet; electric computer games adapted for use with an external display screen or monitor; electric computer games adapted for use with visual display unites; hand held computer games for use with television receives only; programs for use with computer

games (U.S. Trademark App. Ser. No. 79098147); and (2) clothing, hair accessories, toys, including plush toys, and a wide variety of additional merchandise as well as entertainment services including live-action, comedy, drama and animated television series, theatrical films, theatrical performances and related entertainment services that are part of Halfbrick's licensing efforts (U.S. Trademark App. Ser. Nos. 85613743 and 85650584). Copies of Halfbrick's trademark application reports accompany this Complaint as Exhibit B.

22. Halfbrick has also registered the copyright in the design elements of its Fruit Ninja computer game, including its logo and the artwork appearing on-screen within the game, such as its distinctive background, characters and fruit shapes (U.S. Copyright Reg. Nos. VA 1-795-704, VA 1-795-725 and VA 1-795-726). Copies of Halfbrick's certificates of copyright registration are appended hereto as Exhibit C.

Halfbrick's Licensing Agreements

23. In February 2011, Halfbrick began licensing rights to the characters within the Fruit Ninja game, namely, Sensei and the characteristic fruits and bombs that appear on-screen during game play.

24. As of June, 2012, Halfbrick has signed deals with more than twenty licensees around the world to produce authorized products derived from the intellectual property within the Fruit Ninja computer game. Halfbrick expects the number of licensing partners to grow to more than 50 before the end of 2012.

25. Licensing revenue associated with the characters that appear in the Fruit Ninja game is as important to Halfbrick as the revenue generated from direct sales of Fruit Ninja computer games.

The Fruit Ninja Characters and Plush Toys

26. In mid-2011, Halfbrick began working with multiple licensees to create plush toys (similar in nature to stuffed animals) in the form of the Sensei character and the characteristic bombs and fruits that appear on-screen within the Fruit Ninja computer game. The fruit characters include a watermelon, apple, peach, banana, pineapple, orange, and strawberry.

27. The Fruit Ninja plush toys are anthropomorphic in nature, with eyes and/or a mouth, and wear a black headband around the top portion so that the fruit resembles a ninja warrior. The Fruit Ninja logo appears within the center of the black headband. Photographs shown in Exhibit D appended hereto accurately depict Fruit Ninja plush toys.

28. Halfbrick's licensing agent provides Halfbrick's licensees detailed style guides for the Fruit Ninja plush toys to ensure a common appearance, to ensure that consumers purchase products that are consistently of high quality in accordance with Halfbrick's standards, and to protect Halfbrick's intellectual property rights. Upon information and belief, anthropomorphic fruit-shaped plush toys having a black headband were unknown in the toy market before the introduction of the Fruit Ninja fruit characters.

29. Halfbrick has also protected its valuable rights by registering the copyrights it owns in the characters within its Fruit Ninja computer game, as those characters are depicted in the Fruit Ninja style guides and embodied in the Fruit Ninja plush toys (the "Fruit Ninja Characters"). Specifically, Halfbrick owns the following relevant U.S. Copyright Registrations:

Fruit Ninja Watermelon Plush U.S. Copyright Reg. No. VA 1-817-455

Fruit Ninja Watermelon Clip Plush U.S. Copyright Reg. No. VA 1-817-456

Fruit Ninja Banana Plush U.S. Copyright Reg. No. VA 1-817-457

Fruit Ninja Orange Clip Plush U.S. Copyright Reg. No. VA 1-817-459

Fruit Ninja Strawberry Plush	U.S. Copyright Reg. No. VA 1-817-460
Fruit Ninja Pineapple Plush	U.S. Copyright Reg. No. VA 1-817-461
Fruit Ninja Green Apple Plush	U.S. Copyright Reg. No. VA 1-817-462

Copies of these certificates of copyright registration are appended hereto as **Exhibit E**.

30. In addition, as a result of Halfbrick's efforts, the fame of the Fruit Ninja game, the quality of the Fruit Ninja products, the inherent distinctiveness of the Fruit Ninja Characters, Halfbrick's promotions, and word-of-mouth buzz, Halfbrick has developed valuable common law trademark rights in the Fruit Ninja Characters.

31. Halfbrick's Fruit Ninja marks and products hold a prominent place in the minds of the public. Members of the public have become familiar with the Fruit Ninja marks and products, and have come to recognize the marks and products and associate them exclusively with Halfbrick. Halfbrick has acquired a valuable reputation and goodwill in the United States and around the world as a result of such association. Indeed, the Fruit Ninja Characters and other Fruit Ninja marks and products are famous in the United States, among other countries.

Defendant's Wrongful and Infringing Conduct

32. In light of the widespread fame and success of Halfbrick's Fruit Ninja games, Fruit Ninja Characters, and products, Halfbrick has become the target for unscrupulous individuals and entities who wish to take a free ride on the goodwill, reputation and fame Halfbrick has built up in its Fruit Ninja brand and who wish to unlawfully exploit the marks and copyrighted works owned by Halfbrick for their own financial gain. Halfbrick has vigorously policed and enforced its rights against such infringers.

33. On or about April 10, 2012, Halfbrick became aware that Peek-A-Boo was creating and marketing for sale a set of plush toys named "Hippie Fruit Fighters" that were substantially similar, if not identical, to the Fruit Ninja plush toys.

34. Peek-A-Boo's "Hippie Fruit Fighters" are anthropomorphic in nature, with eyes and a mouth and a black headband around the top portion so that the fruit resembles a ninja warrior. Peek-A-Boo's "Hippie Fruit Fighters" infringe on Halfbrick's Fruit Ninja related marks, copyrights and products.

35. Peek-A-Boo's infringing "Hippie Fruit Fighters" are marketed and available for sale (or to win as a prize) in various U.S. outlets. Upon information and belief, the Peek-A-Boo "Hippie Fruit Fighters" have been offered for sale and sold within the State of New Jersey. A copy of a promotional sheet offering the infringing products for sale is attached hereto as

Exhibit F.

36. In addition, Peek-A-Boo's marketing literature falsely suggests a connection with Halfbrick's Fruit Ninja computer game by showing the "Hippie Fruit Fighters" with fruit juice sprayed from each side of a fruit that has been sliced in half, in a manner that immediately suggests the game play of the Fruit Ninja game and the spraying of juice from fruit in the mark shown in U.S. Trademark Registration No. 3,960,784 as depicted in paragraph 20 herein. Peek-A-Boo's use of the fighting concept bears no relationship to the "Hippie" motif that Peek-A-Boo has disingenuously associated with its plush toys.

37. Peek-A-Boo's sales of these infringing products and, on information and belief, Peek-A-Boo's other dealings in infringing product (including importing, advertising, displaying, distributing, selling and/or offering to sell infringing product) trespass on Halfbrick's exclusive rights in its Fruit Ninja marks, copyrights and products. Peek-A-Boo is using images and

designs that are substantially similar to and identical to Halfbrick's copyrighted works and also constitute infringement of Halfbrick's trademarks, with the intent and the effect of confusing consumers and to aid in Peek-A-Boo's promotion and sales of its unauthorized product.

38. Peek-A-Boo's creation, marketing, and sale of its "Hippie Fruit Fighters" began well after the creation, adoption, and use of Halfbrick's Fruit Ninja marks, copyrighted works, and products. Upon information and belief, Peek-A-Boo had knowledge of Halfbrick's Fruit Ninja marks, copyrights, and products, and the fame of the same, and adopted its "Hippie Fruit Fighters" design and product in bad faith and to capitalize on the success of Halfbrick's Fruit Ninja marks, copyrighted works, and products.

39. Neither Halfbrick nor any authorized agents have consented to Defendant's use of Halfbrick's intellectual property. Peek-A-Boo is not authorized to manufacture, copy, advertise, market, display, sell, create derivative works of, or distribute any products incorporating Halfbrick's Fruit Ninja marks, copyrighted works, and products.

40. End-customers who have purchased the Peek-A-Boo plush toys have referred to the Peek-A-Boo plush toys as "out-and-out knock-offs" of the Fruit Ninja plush toys.

41. Halfbrick's licensees have reported multiple instances of distributors canceling orders for Halfbrick's licensed Fruit Ninja plush toys in order instead to purchase the (presumably cheaper) Peek-A-Boo knock-off plush toys. Halfbrick anticipates that the losses arising from such infringing activity will amount to millions of dollars over the next 12-24 months, apart from the loss of Halfbrick's reputation and ability to market and sell future products.

First Claim for Relief

(Copyright Infringement – Fruit Ninja Plush Toys)

[17 U.S.C. §501(a)]

42. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

43. Halfbrick is the exclusive owner of copyrights in and related to its Fruit Ninja Characters and products and owns U.S. copyright registrations for these works.

44. Defendant has actual notice of Halfbrick's exclusive copyright in the designs and/or constructive notice as a result of Halfbrick's use of the copyright registration symbol (©) on and in connection with these works.

45. Defendant did not seek and failed to obtain Halfbrick's consent or authorization to utilize, manufacture, reproduce, copy, display, prepare derivative works, distribute, sell, transfer, rent, perform, and/or market Halfbrick's copyright-protected characters and/or products.

46. Without permission, Defendant intentionally and knowingly reproduced, copied, displayed, and/or manufactured Halfbrick's protected works by offering, advertising, promoting, retailing, selling, and distributing products which are at a minimum substantially similar and at worst identical to Halfbrick's copyrighted works.

47. Defendant's acts as alleged herein, constitute infringement of Halfbrick's rights under copyright in and to its works, including its exclusive rights to reproduce, distribute and/or sell such protected material.

48. Defendant's knowing and intentional copyright infringement as alleged herein has caused and will continue to cause substantial and irreparable harm to Halfbrick and has and will continue to cause damage to Halfbrick. Halfbrick is therefore entitled to injunctive relief,

damages, Defendant's profits, increased damages, and reasonable attorney's fees and costs.

Second Claim for Relief

(False Designation of Origin, Passing Off & Unfair Competition)

[15 U.S.C. §1125(a)/Lanham Act §43(a)]

49. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

50. Defendant has, without authorization, on or in connection with its goods and services, used in commerce symbols or devices or made false designations of origin which are likely to cause confusion or cause mistake or to deceive as to the affiliation, connection or association of Defendant's products with Halfbrick, and/or as to the origin, sponsorship or approval of Defendant's goods or services or commercial activities.

51. Defendant's conduct described above violates the Lanham Act, and Defendant has unfairly competed with and injured and, unless immediately restrained, will continue to injure Halfbrick, causing damage to Halfbrick in an amount to be determined at trial, and will cause irreparable injury to Halfbrick's goodwill and reputation.

52. On information and belief, the conduct of Defendant has been knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to deceive and in blatant disregard of Halfbrick's rights.

53. Defendant knew or by the exercise of reasonable care should have known that their adoption and commencement of use in commerce and continuing use of plush fruit designs that are confusingly similar to and constitute a reproduction of Halfbrick's Fruit Ninja marks, copyrighted works, and products would cause confusion, mistake, or deception among purchasers, users and the public.

54. Defendant's egregious and intentional marketing, use, and sale of items that are confusingly similar to and constitute a reproduction of Halfbrick's Fruit Ninja marks, copyrighted works, and products unfairly competes with Halfbrick and is likely to cause confusion, mistake, or to deceive, mislead, betray, and defraud consumers to believe that the imitation goods are genuine, authorized products.

55. Defendant's conduct constitutes a false designation of origin (passing off) and unfair competition in violation of §43(a) of the Lanham Act, 15 U.S.C. §1125(a), causing Halfbrick to suffer substantial and irreparable injury for which it has no adequate remedy at law.

56. Defendant's wrongful conduct has permitted or will permit Defendant to make substantial sales and profits on the strength of Halfbrick's marketing, advertising, sales and consumer recognition. As a direct and proximate result of Defendant's wrongful conduct, as alleged herein, Halfbrick has been and will be deprived of sales of its products in an amount as yet unknown but to be determined at trial, and has been deprived and will be deprived of the value of its marks as commercial assets in an amount as yet unknown but to be determined at trial. Halfbrick seeks an accounting of Defendant's profits, and requests that the Court grant Halfbrick three times that amount in the Court's discretion.

57. Based on Defendant's wrongful conduct, Halfbrick is entitled to injunctive relief as well as monetary damages, and other remedies as provided by the Lanham Act, including Defendant's profits, treble damages, reasonable attorneys' fees, costs and prejudgment interest.

Third Claim for Relief

(Trademark Dilution)

[15 U.S.C. §1125(c)/Lanham Act §43(c)]

58. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

59. Halfbrick's registered and common law Fruit Ninja marks are strong and inherently distinctive marks that have been in use for several years and have achieved enormous and widespread public recognition. The marks are famous within the meaning of Section 43(c) of the Lanham Act.

60. Peek-A-Boo's egregious and intentional use and sale of items that are confusingly similar to and constitute a reproduction of Halfbrick's Fruit Ninja marks, without authorization from Halfbrick, is diluting the distinctive quality of the marks by decreasing the capacity of such marks to identify and distinguish Halfbrick's products (blurring) and also by tarnishing the value of Halfbrick's mark by offering low quality and cheaper products.

61. Peek-A-Boo has intentionally and willfully diluted the distinctive quality of Halfbrick's Fruit Ninja marks in violation of Section 43(c) of the Lanham Act.

62. Upon information and belief, Peek-A-Boo has made and will continue to make substantial profits and gains to which it is not entitled in law or equity.

63. Upon information and belief, Defendant intends to continue its infringing acts unless otherwise restrained by this Court.

64. Defendant's acts have caused damage and will continue to cause damage to Halfbrick, and Halfbrick has no adequate remedy at law.

Fourth Claim for Relief

(Common Law Trademark Infringement)

65. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

66. Defendant's marketing, use, and sale of items that are confusingly similar to and constitute a reproduction of Halfbrick's Fruit Ninja marks, copyrighted works, is likely to cause confusion, mistake, or to deceive, mislead, betray, and defraud consumers to believe that the imitation goods are genuine, authorized products and therefore infringes Halfbrick's common law trademark rights in its Fruit Ninja Characters and other marks.

67. Upon information and belief, Peek-A-Boo has made and will continue to make substantial profits and gains from its infringements of Halfbrick's rights.

68. Upon information and belief, Defendant intends to continue its infringing acts unless otherwise restrained by this Court.

69. Defendant's acts have caused damage and will continue to cause damage to Halfbrick, and Halfbrick has no adequate remedy at law.

70. Defendant's infringement of Halfbrick's common law trademark rights was egregious, intentional, and willful, entitling Halfbrick to exemplary or punitive damages.

Fifth Claim for Relief

(Unfair Competition Under the New Jersey Common Law)

71. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

72. By marketing, advertising, promoting, selling and/or otherwise dealing in the infringing products, Defendant has engaged in unfair competition including unlawful, unfair and fraudulent business practices in violation of the common law of the State of New Jersey.

73. Defendant's marketing, advertising, promoting, selling and/or otherwise dealing in infringing products is in violation and derogation of Halfbrick's rights and is likely to cause confusion, mistake and deception among consumers and the public as to the source, origin, sponsorship, or quality of the goods of Defendant, thereby causing loss, damage and injury to Halfbrick and to the purchasing public. Defendant's conduct was intended to cause such loss, damage and injury.

74. Defendant knew or by the exercise of reasonable care should have known that its marketing, advertising, promoting, selling and/or otherwise dealing in and its continued marketing, advertising, promoting, selling and/or otherwise dealing in the infringing products would cause confusion mistake or deception among purchasers, users and the public.

75. By marketing, advertising, promoting, selling and/or otherwise dealing in and by its continued marketing, advertising, promoting, selling and/or otherwise dealing in infringing products, Defendant intended to and did induce and intends to and will induce customers to purchase its products by trading off the extensive goodwill built up by Halfbrick.

76. Upon information and belief, the conduct of Defendant has been knowing, deliberate, willful, intended to cause confusion, or to cause mistake or to deceive, and in disregard of Halfbrick's rights.

77. Defendant's wrongful conduct, as alleged above, has permitted and will permit them to make substantial sales and profits on the strength of Halfbrick's nationwide marketing, advertising, sales and consumer recognition. As a direct and proximate result of Defendant's

wrongful conduct, as alleged herein, Halfbrick has been and will be deprived of substantial sales of its products in an amount as yet unknown but to be determined at trial, and has been and will be deprived of the value of its trademarks as commercial assets, in an amount as yet unknown but to be determined at trial. Halfbrick seeks an order granting Defendant's profits stemming from its infringing activity, and its actual and/or compensatory damages.

78. Halfbrick has no adequate remedy at law for Defendant's continuing violation of its rights set forth above. Plaintiff seeks preliminary and permanent injunctive relief.

79. Halfbrick seeks exemplary or punitive damages for Defendant's intentional misconduct.

Sixth Claim for Relief

(Unfair Competition Under the New Jersey Fair Trade Act, N.J.S.A. 56:4-1, *et seq.*)

80. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

81. The foregoing acts of Defendant constitute unfair competition in violation of N.J.S.A. 56:4-1, *et seq.*

82. Upon information and belief, Defendant has made and will continue to make substantial profits and gains to which it is not in law or equity entitled to.

83. Defendant is liable to Halfbrick for all damages, whether direct or indirect, for the misappropriation, passing off and infringement of Halfbrick's marks, copyrights, products, brand, reputation and goodwill, which damages are subject to trebling.

84. Upon information and belief, Defendant intends to continue its infringing acts unless otherwise restrained by this Court.

85. Defendant's acts have caused damage and will continue to cause damage to Halfbrick, and Halfbrick has no adequate remedy at law.

Seventh Claim for Relief

(Unjust Enrichment)

86. Halfbrick realleges and incorporates by reference each of the paragraphs contained in this Complaint as if fully set forth herein.

87. By virtue of the egregious and illegal acts of Defendant as described above, Defendant has been unjustly and unfairly enriched at Halfbrick's expense in an amount to proven at trial.

88. Defendant's retention of monies gained through its deceptive business practices, infringement, acts of deceit and otherwise would serve to unjustly enrich Defendant and would be contrary to the interests of justice.

89. This unjust enrichment has been gained at the sole and wrongful expense of Halfbrick. Equity and good conscience militate against permitting Defendant to retain what is has derived by its unauthorized use of Halfbrick's intellectual property.

90. As a direct and proximate result of the foregoing acts, Defendant has been and will continue to be enriched at Halfbrick's expense, and Halfbrick has been damaged and has suffered and will continue to suffer immediate and irreparable injury for which Halfbrick has no adequate remedy at law.

PRAAYER FOR RELIEF

WHEREFORE, Halfbrick respectfully prays for judgment against Defendant as follows:

A. For an award of Defendant's profits and Halfbrick's damages in an amount to be proven at trial for copyright infringement under 17 U.S.C. §501(a);

- B. For an award of Defendant's profits and Halfbrick's damages in an amount to be proven at trial for false designation of origin and unfair competition under 15 U.S.C. § 1125(a);
- C. For restitution in an amount to be proven at trial for unfair, fraudulent and illegal business practices;
- D. For damages to be proven at trial for unfair competition pursuant to N.J.S.A. 56:4-1, *et seq.* and/or the common law, including but not limited to, treble damages;
- E. For an injunction by this Court prohibiting Defendant from engaging or continuing to engage in the unlawful, unfair, or fraudulent business acts or practices described herein, including the advertising and/or dealing in any infringing product; the unauthorized use of any copyright or other intellectual property right of Halfbrick; acts of copyright infringement; unfair competition; and any other act in derogation of Halfbrick's rights;
- F. For an order from the Court requiring that Defendant provide complete accountings and for equitable relief, including that Defendant disgorge and return or pay their ill-gotten gains obtained from the illegal transactions entered into and or pay restitution, including the amount of monies that should have been paid if Defendant's complied with their legal obligations, or as equity requires;
- G. For an order from the Court that an asset freeze or constructive trust be imposed over all monies and profits in Defendant's possession which rightfully belong to Halfbrick;
- H. For destruction of the infringing articles in Defendant's possession or control, and the means of producing such infringing articles, under 17 U.S.C. §503;
- I. For damages in an amount to be proven at trial for unjust enrichment.
- J. For an award of exemplary or punitive damages in an amount to be determined by the Court;

- K. For Halfbrick 's reasonable attorney's fees;
- L. For all costs of suit;
- M. For such other and further relief as the Court may deem just and equitable.

NORRIS, McLAUGHLIN & MARCUS, PA
Attorneys for Plaintiff

By: /s/ Steven A. Karg
Steven A. Karg
721 Route 202-206, Suite 200
P.O. Box 5933
Bridgewater, NJ 08807

Dated: July 3, 2012

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury of all issues so triable in this action.

NORRIS, McLAUGHLIN & MARCUS, PA
Attorneys for Plaintiff

By: /s/ Steven A. Karg
Steven A. Karg
721 Route 202-206, Suite 200
P.O. Box 5933
Bridgewater, NJ 08807

Dated: July 3, 2012

CERTIFICATION OF NON-ARBITRABILITY

Pursuant to Local Civil Rule 201.1(d)(2), the undersigned attorney for Plaintiff Halfbrick Studios Pty Ltd., certifies that this action is not eligible for arbitration under Local Civil Rule 201.1 because the relief sought in the Complaint primarily consists of a demand for preliminary and permanent injunctive relief.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that the with respect to the matter in controversy herein, neither plaintiff nor its attorneys are aware of any other action pending in any court, or of any pending arbitration or administrative proceeding, to which this matter is subject.

NORRIS, McLAUGHLIN & MARCUS, PA
Attorneys for Plaintiff

By: /s/ Steven A. Karg
Steven A. Karg
721 Route 202-206, Suite 200
P.O. Box 5933
Bridgewater, NJ 08807

Dated: July 3, 2012

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- Exhibit F Defendant's Infringing Plush Toys and Marketing Literature

EXHIBIT A

United States of America

United States Patent and Trademark Office



Reg. No. 3,960,787

Registered May 17, 2011

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

HALFBRICK STUDIOS PTY LTD (AUSTRALIA COMPANY PROPRIETARY LIMITED)

LEVEL 1

190 KELVIN GROVE ROAD; KELVIN GROVE QLD4059

AUSTRALIA

FOR: COMPUTER GAME SOFTWARE; SOFTWARE FOR COMPUTER GAMES FOR USE ON MOBILE AND CELLULAR PHONES, USE ON PERSONAL COMPUTERS, TABLET COMPUTERS, HAND-HELD PERSONAL GAMING DEVICES, AND HOME VIDEO GAME CONSOLES, AND USE ON GAMING MACHINES, INCLUDING SLOT MACHINES OR VIDEO LOTTERY TERMINALS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

THE MARK CONSISTS OF THE FOLLOWING: THE WORDING "FRUIT" WITH BLACK OUTLINING ON EACH LETTER, WHERE THE 'F' IS PURPLE, THE 'R' IS RED, THE 'U' IS YELLOW, THE 'I' IS ORANGE AND THE 'T' IS GREEN; ADDITIONALLY ABOVE THE 'I' ARE TWO GREEN LEAVES; BENEATH THIS IS THE WORDING "NINJA", WHERE THE 'A' MIMICS AN ASIAN CHARACTER BY HAVING A CROSS-HATCH AT ITS TOP AND AN ANGLED CENTRAL LINE AND THE 'A' APPEARS IN SHADES OF GRAY WITH BLACK OUTLINING; TO THE RIGHT OF THIS WORDING IS THE DESIGN OF A WATERMELON IN SHADES OF GREEN, BEING CUT IN HALF BY A GRAY BLADE EXPOSING THE RED FLESH OF THE MELON AND BLACK SEEDS; THIS CUT IS PRODUCING RED SPLATTER ON THE BROWN BACKGROUND OF THE MARK.

OWNER OF INTERNATIONAL REGISTRATION 1045456 DATED 7-12-2010, EXPIRES 7-12-2020.

THE COLOR(S) PURPLE, RED, YELLOW, ORANGE, GREEN, GRAY, BROWN AND BLACK IS/ARE CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 79-085,213, FILED 7-12-2010.

BENJAMIN OKEKE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

- ***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See 15 U.S.C. §§1058, 1141k.* If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- ***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See 15 U.S.C. §1059.*

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See 15 U.S.C. §§1058, 1141k.* However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See 15 U.S.C. §1141j.* For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

EXHIBIT B

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=79098147>

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-06-29 16:15:57 ET

Serial Number: 79098147 [Assignment Information](#)

[Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

FRUIT NINJA

(words only): FRUIT NINJA

Standard Character claim: Yes

Current Status: Application has been published for opposition. The opposition period begins on the date of publication.

Date of Status: 2012-06-01

Filing Date: 2011-04-11

The Information will be/was published in the Official Gazette on 2011-08-23

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 115

Attorney Assigned:

POVARCHUK REBECCA JOYCE

Current Location: 650 -Publication And Issue Section

Date In Location: 2012-06-01

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Halfbrick Studios Pty Ltd

Address:

Halfbrick Studios Pty Ltd
Level 1 190 Kelvin Grove Road

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=79098147>

Kelvin Grove QLD 4059

Australia

Legal Entity Type: Company Proprietary Limited

State or Country Where Organized: Australia

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Computer game programs; computer games adapted for use with an external display screen or monitor; computer games entertainment software; computer games programs; computer games programs downloaded via the Internet; computer games software; computer programs for computer games; electric computer games adapted for use with an external display screen or monitor; electric computer games adapted for use with visual display units; hand held computer games for use with television receivers only; programs for use with computer games

Basis: 66(a)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

International Registration Number: 1079351**International Registration Date:** 2011-04-11**Priority Claimed:** Yes**Date of Section 67 Priority Claim:** 2011-01-25**International Registration Status:** Request For Extension Of Protection Processed**Date of International Registration Status:** 2011-06-30**International Registration Renewal Date:** 2021-04-11**Notification of Designation Date:** 2011-06-30**Date of Automatic Protection:** 2012-12-30**Date International Registration Cancelled:** (DATE NOT AVAILABLE)**First Refusal:** No

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-05-18 - Attorney Revoked And/Or Appointed

2012-05-18 - TEAS Revoke/Appoint Attorney Received

2012-01-09 - Notification Processed By IB

2011-10-13 - Electronic Record Review Complete

2011-10-07 - On Hold - Electronic Record Review Required

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=79098147>

2011-08-23 - Published for opposition

2011-08-17 - Notification Of Possible Opposition Sent To IB

2011-08-17 - Notice Of Start Of Opposition Period Created, To Be Sent To IB

2011-08-03 - Notice of publication

2011-07-20 - Approved for Pub - Principal Register (Initial exam)

2011-07-14 - Assigned To Examiner

2011-07-05 - Application Filing Receipt Mailed

2011-07-01 - New Application Office Supplied Data Entered In Tram

2011-06-30 - Sn Assigned For Sect 66a Appl From IB

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Nicholas D. Wells

Correspondent

Nicholas D. Wells

Wells IP Law

299 S. Main St., Suite 1300

Salt Lake City UT 84111

Phone Number: 801-444-7143

Fax Number: 203-295-3730

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85613743>

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-06-29 16:16:59 ET

Serial Number: 85613743 [Assignment Information](#)

[Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

FRUIT NINJA

(words only): FRUIT NINJA

Standard Character claim: Yes

Current Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2012-06-25

Filing Date: 2012-05-01

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 106

Attorney Assigned:
ELTON DAVID JONATHAN

Current Location: L6X -TMEG Law Office 106 - Examining Attorney Assigned

Date In Location: 2012-06-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Halfbrick Studios Pty Ltd

Address:

Halfbrick Studios Pty Ltd
Level 1 190 Kelvin Grove Road
Kelvin Grove QLD 4059
Australia

Legal Entity Type: Corporation

State or Country of Incorporation: Australia

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

Headphones; portable radios; carrying cases, holders, and protective cases for electronic equipment, namely, mobile phones, personal electronic devices, MP3 players; straps for mobile phones; mobile phones; MP3 players; electronic personal organizers

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 014

Class Status: Active

alarm clocks; bangles; jewelry; cloisonne pins; collectible coins; costume jewelry; hair jewelry in the nature of jewelry for use in the hair; horological and chronometric instruments and parts thereof; jewelry boxes; key chains as jewelry; key rings of precious metals; clocks; watches; watchstraps; watches containing an electronic game function

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 025

Class Status: Active

clothing, namely, shirts, T-shirts, vests, sweaters, shorts, pants, socks, sock suspenders, scarves, dresses, skirts; caps, hats; shoes

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 026

Class Status: Active

Hair accessories, namely, hair clips, hair sticks, hair ties, hair scrunchies, hair bands, hair barrettes, hair bows, hair buckles, hair clamps, hair elastics, hair ornaments, hair ribbons; belt buckles; bobby pins; bows for gift wrapping; buttons for clothing; clasps for clothing; decorative ribbons; novelty buttons; ribbons; shoe laces; zipper pulls

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 028

Class Status: Active

games, namely, amusement game machines, arcade games, board games, card games, dart games, dice games,

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85613743>

parlor games, party games, puzzle games, tabletop games, Action skill games; Bubble making wand and solution sets; Building games; Dominoes; puzzles; Manipulative games; Manipulative puzzles; Marbles for games; Play tents; Play tunnels; toy balloons; novelty toy items in the nature of free flowing play gels, novelty toys which produce holograms, party novelties, namely, party favors in the nature of small toys; Solar-powered mechanical novelty toys; toy novelty items, namely, replicas of baseballs, footballs, basketballs, soccer balls, volleyballs, tennis balls, golf balls, softballs, boxing gloves, hockey pucks, megaphones, sports helmets, and race car wheels; plastic candy dispensers designed as toys; party novelties, namely, paper hats, streamers, crackers, party poppers; novelty flotation devices for recreational use, specifically arm floats, swim floats; plastic yo-yos; Electronic novelty toys, namely, toys that electronically display information and produce sounds; Christmas tree decorations and ornaments; video game cartridges; Drawing toys; Action figure toys; Arrows; Articles of clothing for toys; Attachable, wearable, magnetic toy figurines; Baby multiple activity toys; Bath toys; Bathtub toys; Battery operated action toys; Bendable toys; Carrying bags specially adapted for toy vehicles; Cases for toy structures; Cases for toy vehicles; Cat toys; Children's activity tables containing manipulative toys which convert to easels; Children's dress up accessories, namely, toy helmets for play; Children's educational toys for developing knowledge about educational subjects from grades 1 through 12; Children's multiple activity toys; Children's multiple activity toys sold as a unit with printed books; Children's toy bicycles other than for transport; Children's wire construction and art activity toys; Clockwork toys; Timepiece toys; Collectable toy figures; Construction toys; Crib toys; Decorative toy mobiles and plush toys for children made of felt; Disc toss toys; Dog toys; Dolls and doll accessories, namely, clothing for dolls, doll rooms, doll beds, doll houses, toy fabrics and linens for dolls and strollers for dolls; Drawing toys; Electronic action toys; Electronic learning toys; Electronic toy building blocks that light up as a night light; Electronic toy vehicles; Fantasy character toys; Flying saucers; toy game balls; Infant toys; Inflatable toys; Lever action toys; Mechanical toys; Miniature toy helmets; Model toy vehicles; Modeled plastic toy figurines; Molded toy figures; Music box toys; Musical toys; Non-electronic toy vehicles; Party favors in the nature of small toys; Pet toys; Plastic character toys; Plastic toy hoops; Play houses and toy accessories therefor; Play mats containing infant toys; Plush toys; Pop up toys; Positionable toy figures; Radio controlled toy vehicles; Radio transmitters for use with radio-controlled toys; Ride-on toys; Rubber character toys; Sand toys; Scale model kits; Sketching toys; Soft sculpture toys; Squeezable squeaking toys; Tossing disc toys; Toy action figures; Toy airplanes; Toy and novelty face masks; Toy animals; Toy banks; Toy boats; Toy bows and arrows; Toy boxes; Toy building blocks; Toy building structures and toy vehicle tracks; Toy buildings and accessories therefor; Toy butterfly nets; Toy candy dispensers; Toy cap pistols; Toy cars; Toy Christmas trees; Toy clocks and watches; Toy construction blocks; Toy construction sets; Toy figures; Toy fireworks; Toy foam novelty items, namely, foam fingers and hands; Toy furniture; Toy gliders; Toy guns; Toy harmonicas; Toy holsters; Toy hoop sets; Toy houses; Toy masks; Toy mobiles; Toy model cars; Toy model guitars; Toy model hobby craft kits; Toy model kit cars; Toy model train sets; Toy model vehicles and related accessories sold as units; Toy modeling dough; Toy music boxes; Toy noisemakers; Toy pianos; Toy pianos, sold as a unit with printed books in the field of music education; Toy pistols; Toy prism glasses; Toy putty; Toy record players; Toy robots; Toy rockets; Toy scooters; Toy scooters and accessories therefor; Toy sets of carpenters' tools; Toy sling planes; Toy snow globes; Toy stamps; Toy swords; Toy telescopes; Toy tools; Toy trains and parts and accessories therefor; Toy vehicle track sets and roadways and accessories therefor; Toy vehicles; Toy vehicles and accessories therefor; Toy vehicles with transforming parts; Toy vehicles, namely, caster boards; Toy watches; Toy water globes; Toy weapons; Toy whistles; Toy wind socks; Toy xylophones; Toy zip guns; Toy action figures designed to be attached to glass surfaces; Toys, namely, a disk to toss in playing a game wherein other disks are flipped and collected; Toys, namely, bean bag animals; Toys, namely, children's dress-up accessories; Toys, namely, kites; Toys, namely, percussion caps; Toys, namely, puppets and accessories therefor; Transforming robotic toy vehicles; Transforming robotic toys; Water squirting toys; Water toys; Wind-up toys; Wind-up walking toys

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85613743>

International Class: 030

Class Status: Active

Candy, bakery goods

Basis: 1(b), 44(d)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Prior Registration Number(s):

3960787

4000677

4113642

Foreign Application Number: 10829083

Country: Erpn Cmnty TM Ofc

Foreign Filing Date: 2012-04-23

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2012-06-25 - Notification Of Non-Final Action E-Mailed

2012-06-25 - Non-final action e-mailed

2012-06-25 - Non-Final Action Written

2012-06-24 - Assigned To Examiner

2012-05-08 - New Application Office Supplied Data Entered In Tram

2012-05-04 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Nicholas D. Wells

Correspondent

NICHOLAS D. WELLS

WELLS IP LAW

299 S MAIN ST STE 1300

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85613743>

SALT LAKE CITY, UT 84111-2241
Phone Number: 801-444-7143
Fax Number: 203-295-3730

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85650584>

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Serial Number: 85650584 [Assignment Information](#)

[Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

FRUIT NINJA

(words only): FRUIT NINJA

Standard Character claim: Yes

Current Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Date of Status: 2012-06-25

Filing Date: 2012-06-13

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 106

Attorney Assigned:

ELTON DAVID JONATHAN

Current Location: L6X -TMEG Law Office 106 - Examining Attorney Assigned

Date In Location: 2012-06-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Halfbrick Studios Pty Ltd

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85650584>**Address:**

Halfbrick Studios Pty Ltd
 Level 1 190 Kelvin Grove Road
 Kelvin Grove QLD 4059
 Australia

Legal Entity Type: Corporation**State or Country of Incorporation:** Australia**GOODS AND/OR SERVICES****International Class: 016****Class Status:** Active

Posters; printed comics; comic books; trading cards; erasers; stickers; foam pencil toppers; paint sets; stationery type portfolios; calendars; activity books; magazines; coloring books; address books; notebooks; children's books; paper doorknob hangers; invitations; personal organizers; paper table cloths; book marks; non-electronic personal planners and organizers; artist's materials, namely, pencils, pens; gift wrap; gift tags; gift bags; greeting cards, paper party decorations; paper napkins; paper party bags; paper party hats; postcards; sticker albums; temporary tattoos; school and office supplies, namely, erasers, pencils, pens, markers, pencil cases; pencil sharpeners; paper cake decorations; series of fiction books; juvenile books; personalized books; comic magazines; books containing puzzles and games; children's books combined with toys and sold as a unit; iron-on transfers

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class: 018****Class Status:** Active

All-purpose athletic bags; all-purpose carrying bags; waist packs; wallets; purses; clutch purses; handbags; cosmetic bags sold empty; school bags; satchels; backpacks; traveling bags; luggage; carrying cases; keycases; purse charms; straps for carrying cases; toiletry cases sold empty

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class: 021****Class Status:** Active

Reusable plastic water bottles sold empty; reusable aluminum water bottles sold empty; lunch boxes; beverageware; bottles, sold empty; dishes; hair combs; hairbrushes; tooth brushes; toothbrush cases; mugs, plates, bowls; drinking glasses and cups; paper cups, plastic cups, paper plates, paper bowls; figures, figurines, and statuettes made of resin; cookie jars; non-metal coin banks; children's dinnerware; candy molds; cake pans

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)**International Class: 024****Class Status:** Active

Bath linen; bed linen; kitchen linens; table linen; household linen; blanket throws; bedspreads; bed sheets; pillow cases; quilts; blankets for outdoor use; children's towels; comforters; curtains; fabrics for textile use; plastic place mats; plastic table covers; cloth coasters; tablecloths of textiles; towels; fabrics that may or may

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&cntry=85650584>

not have printed patterns and designs thereon for use in textile applications, namely, the manufacture of apparel, upholstery, signage, flags, banners and wallpaper

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 032

Class Status: Active

Bottled water; energy drinks; fruit drinks; fruit juices; fruit-based beverages; fruit-flavored beverages; soft drinks; sports drinks; smoothies

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

International Class: 041

Class Status: Active

Entertainment services in the nature of live-action, comedy, drama and animated television series; production of live-action, comedy, drama and animated television series; distribution and display of live-action, comedy, drama and animated motion picture theatrical films; production of live-action, comedy, drama and animated motion picture theatrical films; theatrical performances both animated and live action; internet services providing information via an electronic global computer network in the field of entertainment relating specifically to music, movies, computer games, and television; providing general interest news, entertainment, and educational information via a global computer network; providing information for and actual entertainment via electronic global communications network in the nature of live-action, comedy, drama and animated programs and production of live-action comedy, action and animated motion films for distribution via a global computer network; education services, namely, providing live and on-line classes, seminars, and workshops in the field of education for young people, computer software development, video gaming skills, personal development, math, science, language study, history, geography, music, art, business, management; organizing live exhibitions and conferences in the fields of education, culture, sports and entertainment; providing information in the field of children's education

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Prior Registration Number(s):

3960787

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

Latest Status Info

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=85650584>

2012-06-25 - Notification Of Non-Final Action E-Mailed

2012-06-25 - Non-final action e-mailed

2012-06-25 - Non-Final Action Written

2012-06-24 - Assigned To Examiner

2012-06-21 - New Application Office Supplied Data Entered In Tram

2012-06-19 - TEAS Voluntary Amendment Received

2012-06-16 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Nicholas D. Wells

Correspondent

NICHOLAS D. WELLS

WELLS IP LAW

299 S MAIN ST STE 1300

SALT LAKE CITY, UT 84111-2241

Phone Number: 801-444-7143

Fax Number: 203-295-3730

EXHIBIT C

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

Register of Copyrights, United States of America

Registration Number
VA 1-795-725

Effective date of
registration:
October 27, 2011

Title

Title of Work: Fruit Ninja Artwork

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: April 10, 2010

Nation of 1st Publication: United States

Author

■ Author: Halfbrick Studios Pty Ltd

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

Domiciled in: Australia

Copyright claimant

Copyright Claimant: Halfbrick Studios Pty Ltd

Level 1 190 Kelvin Grove Road, Kelvin Grove, QLD 4059, Australia

Rights and Permissions

Organization Name: Wells IP Law, LLC

Name: Nicholas Wells

Email: nwells@wellsiplaw.com

Telephone: 801-444-7143

Address: 299 S. Main St., Suite 1300

Salt Lake City, UT 84111

Certification

Name: Nicholas D. Wells

Date: October 26, 2011

Applicant's Tracking Number: 4705.12.3

Correspondence: Yes

Registration #: VA0001795725

Service Request #: 1-678198451



0000VA00017957250101

Wells IP Law, LLC
Nicholas Wells
299 S. Main St., Suite 1300
Salt Lake City, UT 84111

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

Register of Copyrights, United States of America

Registration Number
VA 1-795-726

Effective date of
registration:
October 26, 2011

Title

Title of Work: Fruit Ninja Design

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: April 21, 2010

Nation of 1st Publication: United States

Author

■ Author: Halfbrick Studios Pty Ltd

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

Domiciled in: Australia

Copyright claimant

Copyright Claimant: Halfbrick Studios Pty Ltd

Level 1 190 Kelvin Grove Road, Kelvin Grove, QLD 4059, Australia

Rights and Permissions

Organization Name: Wells IP Law, LLC

Name: Nicholas Wells

Email: nwells@wellsiplaw.com

Telephone: 801-444-7143

Address: 299 S. Main St., Suite 1300

Salt Lake City, UT 84111

Certification

Name: Nicholas D. Wells

Date: October 26, 2011

Applicant's Tracking Number: 4705.12.2

Correspondence: Yes

Registration #: VA0001795726

Service Request #: 1-678198353



0000VA00017957260101

Wells IP Law, LLC
Nicholas Wells
299 S. Main St., Suite 1300
Salt Lake City, UT 84111

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

Register of Copyrights, United States of America

Registration Number
VA 1-795-704

Effective date of
registration:
October 27, 2011

Title

Title of Work: Fruit Ninja Sensei man

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: April 21, 2010

Nation of 1st Publication: United States

Author

Author: Halfbrick Pty Ltd

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

Domiciled in: Australia

Copyright claimant

Copyright Claimant: Halfbrick Pty Ltd

Level 1 190 Kelvin Grove Road, Kelvin Grove, QLD 4059, Australia

Rights and Permissions

Organization Name: Wells IP Law, LLC

Name: Nicholas Wells

Email: nwells@wellsiplaw.com

Telephone: 801-444-7143

Address: 299 S. Main St., Suite 1300

Salt Lake City, UT 84111 United States

Certification

Name: Nicholas D. Wells

Date: October 26, 2011

Applicant's Tracking Number: 4705.12.1

Registration #: VA0001795704

Service Request #: 1-678102781



0000VA00017957040101

Wells IP Law, LLC
Nicholas Wells
299 S. Main St., Suite 1300
Salt Lake City, UT 84111 United States

EXHIBIT D

Fruit Ninja Slices Into Plush Toys and Electronics



January 17, 2012 by [Alissa Skelton](#) 2

Following the likes of [Angry Birds](#) and [FarmVille](#), *Fruit Ninja* will start selling fuzzy merchandise this year.

[Halfbrick Studios](#) — the creator of the *Fruit Ninja* app — teamed up with [Jazwares Inc.](#) to create *Fruit Ninja* plush toys, headphones, ear buds and speakers. [Sensei](#), the "fruit slicing master," is available for purchase now and a watermelon plush toy is available for [pre-order](#). The rest of the plush toys are supposed to arrive later this year. *Fruit Ninja* electronics will be on sale next fall.

More than 100 million people have downloaded *Fruit Ninja*, which can be played on six mobile operating systems and [XBox Kinect](#). The app was created in 2010 and made *Time's* list of [50 Best iPhone Apps in 2011](#).

The plush toys feature sounds from the game, *Fruit Ninja* bandanas, and will be available for purchase in four different sizes — 4-inch to 20-inch. Just like the game, the toys are fruits — pineapple, strawberry, green apple, watermelon, orange and banana. The plush fruits come with a clip for easy backpack attachment. The 10-inch plush toy will have a fake blade so you can act out the game. The 10- and 20-inch plush toys won't be available for purchase until the fall of 2012.

"Jazwares has done an outstanding job bringing the excitement of *Fruit Ninja* to life, allowing consumers to feel like *Fruit Ninja* warriors with details like ninja bandanas and real fruit-slicing action," Shainiel Deo, CEO of Halfbrick Studios, said in a statement.





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Enter keywords...

Fruit Ninja Plush

January 21, 2012 | [1 Comment](#)



Angry Birds was one of the biggest games of 2011. But if you ask me, *Fruit Ninja* was a close second or third. The mechanics of both games are entirely different and serve different purposes. For example, I find myself getting really angry in real life while I'm shooting the angry birds over the field in *Angry Birds*, while I grow more and more relaxed and calm while slicing up the fruit like mad in *Fruit Ninja*.

And to celebrate all the zen that *Fruit Ninja* has brought me (and possibly, you) there is the *Fruit Ninja Plush*. Aren't they just the cutest? Choose from various fruits available, like the Apple, Pineapple, or Strawberry. But if you prefer something more explosive, then go for the Bomb.

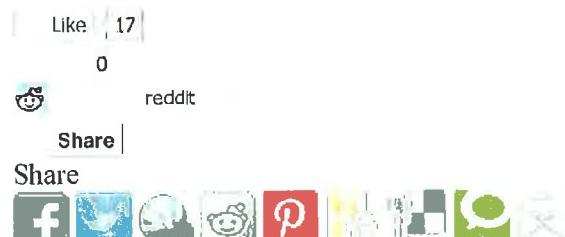


Fruit Ninja Plush

After all, Fruit Ninja for iPhone iOS and Android phones is one of the most downloaded games of all time.

But do you have what it takes to be an actual Fruit Ninja? Well now you can take your chop-socky skills to the next level with Fruit Ninja Plush. One step further than the smartphone game but a few steps away from going full Tarantino in the greengrocers, these adorable characters can be hugged, squeezed, cuddled and occasionally lobbed into the air and tonked with a stick.

The [Fruit Ninja Plush](#) is available for pre-order from Firebox for £8.99 (\$14.)



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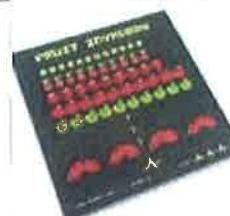
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Halfbrick Studios Reveals New Fruit Ninja Plush!

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Rovio has done a great job getting *Angry Birds* plush toys out into the wild and now Halfbrick is releasing a set of *Fruit Ninja* plush just time for the holidays someone to shove it all the way down to the bottom of your stocking so you can't get it out.

The set consists of two different plush toys – the fun fruit fact master himself, Sensei, and a watermelon fit with an awesome *Fruit Ninja* kung-fu headband. Sensei will set you back \$15.99 while the watermelon comes in a dollar cheaper (for some reason) at \$14.99. There will also be a "training pack" that includes Sensei and a watermelon going for \$29.99 and you can find them at the new *Fruit Ninja* toy store.

Wait, there's a *Fruit Ninja* toy store? Yep, Halfbrick has teamed with online-based Toy Foundry to bring the *Fruit Ninja* brand beyond gaming and these plush toys will launch the venture with more *Fruit Ninja* merchandise on the way next year.

"With *Fruit Ninja*'s universal success, this partnership just developed naturally," said Phil Larsen, chief marketing officer at Halfbrick. "Our fans are crazy about *Fruit Ninja* and this is a really fun and charming way to extend the brand outside of games."

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Unfortunately, it looks like the only Fruit ninja plush available from their new toy store, at the time of writing this post, is the Sensei plush. Thankfully, the watermelon and "training pack" are available for pre-order. Halfbrick says they'll be ready for the holidays so head over to Store.FruitNinja.com and check them out.

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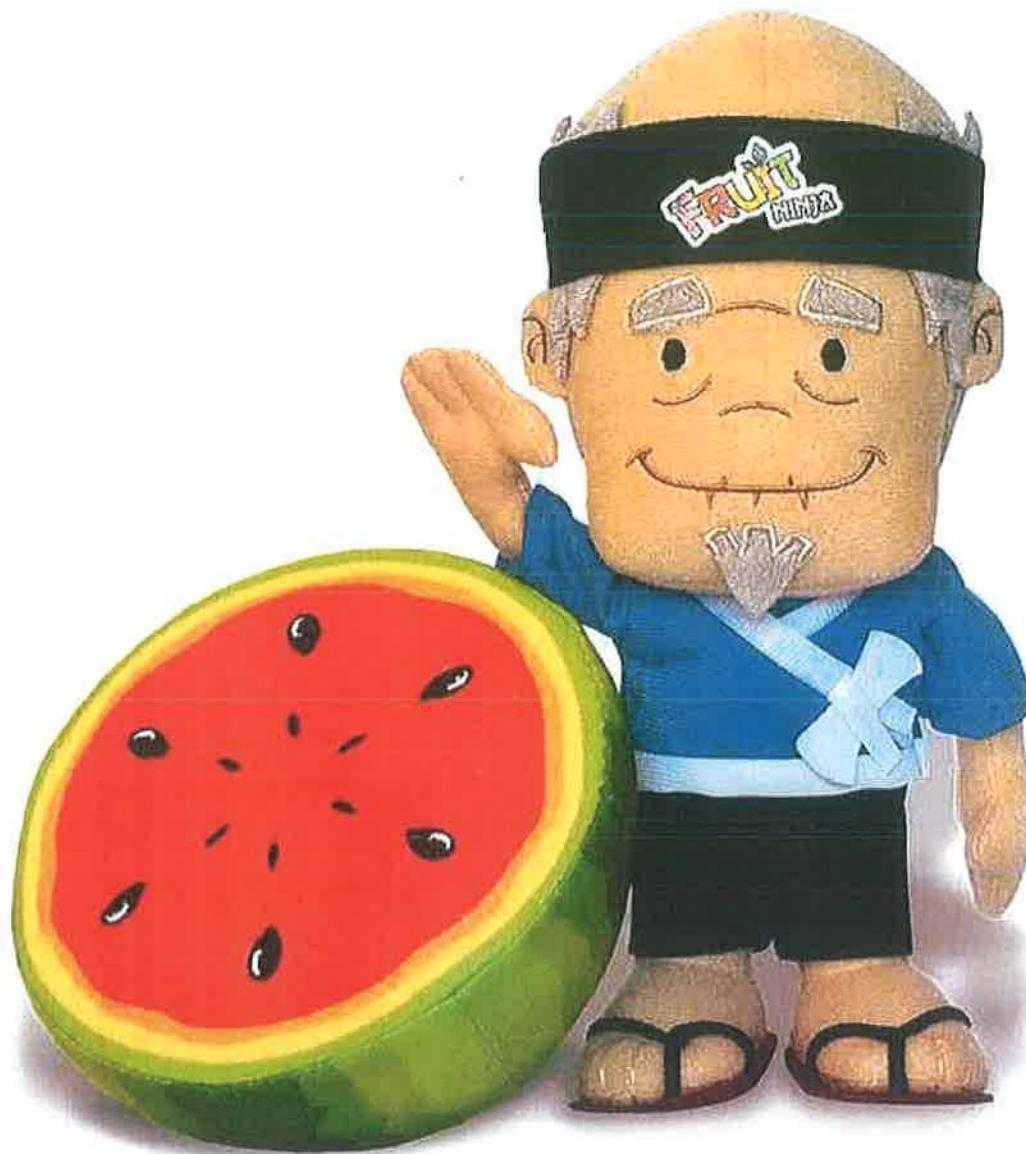
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If you've collected just about every bit of *Angry Birds* merch on the planet, it's time to show some love to the other poster boy of touch-based gaming, *Fruit Ninja*. Developer Halfbrick recently opened its online store, with plushies of the sweet slicer's Sensei mascot and a watermelon as its first offerings.



In keeping with the game's theme, the watermelon plushie has separate upper and lower halves. Sensei is in one piece though.



You can order the *Fruit Ninja* plush toys on Halfbrick's [online store](#). The watermelon plushie costs \$15 (USD), Sensei costs \$16 and the Training Pack – which includes both toys – costs \$30. Hey Halfbrick, I like the watermelon plushie, but you know what would really make you bajillionaires? [Jetpack Joyride](#) plush toys.

[via [Joystiq](#)]



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Title of Work: Fruit Ninja Watermelon Plush

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: February 1, 2012

Nation of 1st Publication: United States

Author

Author: Halfbrick Studios Pty Ltd

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

Author: Jazwares, Inc.

Author Created: sculpture

Work made for hire: Yes

Citizen of: United States

Copyright claimant

Copyright Claimant: Halfbrick Studios Pty Ltd

Level 1 190 Kelvin Grove Road, Kelvin Grove QLD, 4059, Australia

Transfer Statement: By written agreement

Limitation of copyright claim

Material excluded from this claim: 2-D artwork

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New material included in claim: sculpture

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Title

Title of Work: Fruit Ninja Watermelon Clip Plush

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: February 1, 2012

Nation of 1st Publication: United States

Author

■ Author: Halfbrick Studios Pty Ltd

Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

■ Author: Jazwares, Inc.

Author Created: sculpture

Work made for hire: Yes

Citizen of: United States

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Nation of 1st Publication: United States

Author

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Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

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Author Created: sculpture

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Title

Title of Work: Fruit Ninja Orange Clip Plush

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: February 1, 2012

Nation of 1st Publication: United States

Author

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Author Created: 2-D artwork

Work made for hire: Yes

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Title of Work: Fruit Ninja Strawberry Plush

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: February 1, 2012

Nation of 1st Publication: United States

Author

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Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

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Author Created: sculpture

Work made for hire: Yes

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Title

Title of Work: Fruit Ninja Pineapple Plush

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: February 1, 2012

Nation of 1st Publication: United States

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Author Created: 2-D artwork

Work made for hire: Yes

Citizen of: Australia

■ Author: Jazwares, Inc.

Author Created: sculpture

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Author Created: sculpture

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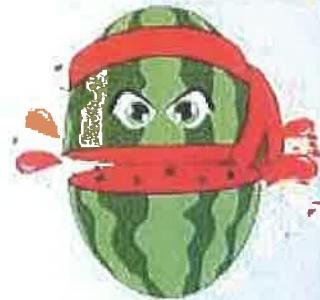
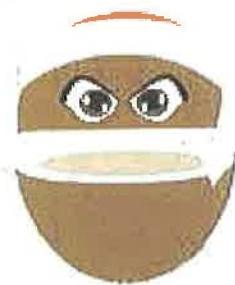
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